



Criminal Defense Attorneys of Michigan

2843 East Grand River, P.O. Box 223 • East Lansing, MI 48823 • (517) 490-1597 • Fax (517) 267-3630

October 21, 2003

OFFICERS:

Marshall S. Tauber,
President
Margaret Sind Raben,
First Vice President
Jill L. Price,
Second Vice President
Patricia A. Macaroni,
Secretary
Earl R. Spuhler,
Treasurer

BOARD MEMBERS:

Penny R. Beardslee
Lynn D'Orio
Terence R. Flanagan
Stuart G. Friedman
John H. Holmes
Barbara A. Klimaszewski
Henry J. Legere, Jr.
Joseph A. Niskar
Patrick M. O'Connell
David C. Roby
James R. Samuels
Mark A. Satawa
Lisa Kirsch Satawa
Michael L. Steinberg
Richard D. Stroba
William W. Swor
Norris J. Thomas, Jr.
Dawn Van Hoek

STANDING COMMITTEES:

Amicus:

John R. Minock
Richard Ginsberg

By-Laws:

Thomas M. Harp

Education:

Penny R. Beardslee
Mark A. Satawa

Finance:

Earl R. Spuhler
Marshall S. Tauber

Membership:

Margaret Sind Raben
Richard D. Stroba

EXECUTIVE DIRECTOR:

Jeri L. Hall

EDUCATION DIRECTOR:

F. Randall Karfonta

Michigan Supreme Court Justices
Michigan Supreme Court Clerk
P.O. Box 30052
Lansing, Michigan 48909

Re: Comments to Proposed Changes to MRE 404(b) (ADM File No. 2001-51)

Dear Madam Chief Justice and Members of the Court:

In response to the request for comments regarding the two proposed changes to the Michigan Rule of Evidence 404(b), please note that this Association opposes the proposed amendments to the current MRE 404(b) for the reasons so cogently set forth in the letter written to you by Oakland County Circuit Judge, Michael W. Warren, dated September 25, 2003.

There are many successful prosecutions of domestic violence cases under the current rules of evidence. The proposed changes seek to expand admissibility to partially related, uncharged or, unsuccessfully convicted other acts evidence. Current case law is sufficient to allow the admission of evidence of other acts, where relevant, to prove, absence of mistake, intent, motive, common scheme or plan or as part of continuing pattern of behavior. To allow the admission of uncharged crimes, hearsay with little exception, and/or other unproven assertions of prior acts of domestic violence will ultimately result, as Judge Warren asserts, in a practical shifting of the burden of proof which would, "...substantially impair the ability of defendants to receive a fair trial..."

As a trial practitioner, I have defended domestic violence cases where both parties to alleged violent acts between them have been at one time the accused and the next time the accuser. Often the unproven prior allegations of domestic violence have been fabricated, (which is why there was no prosecution or conviction), and reported as a result of the particular parties' dysfunctional relationship. Domestic relations attorneys will confirm that false or exaggerated claims of spouse abuse frequently occur during the breakdown or separation process and these allegations may be used to gain tactical advantages in support, property division, child custody or other disputes arising in divorce cases. The proposed rule changes fail to address the very real concerns that accompany evidentiary admission of unconfirmed accusations.

The proposed rule changes are intended to insure the conclusion that the if accused has shown the possibility of a propensity to commit similar acts as the one for which he/she now stands accused then, it is more likely than not, the instant act was also committed. In essence, the proposed changes to MRE 404(b) would be a major step towards destroying the presumption of innocence.

Thank you for your kind consideration.

Sincerely,


Marshall S. Tauber,
President, Criminal Defense Attorneys of Michigan

RECEIVED

OCT 23 2003

CORBIN DAVIS
CLERK SUPREME COURT